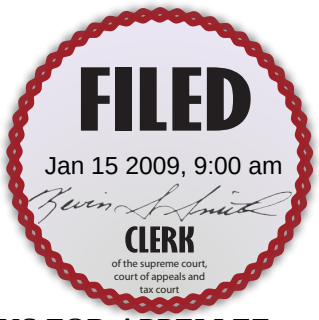

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IN THE
COURT OF APPEALS OF INDIANA

JOSHUA J. FARMER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A05-0807-CR-396
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Clarence D. Murray, Judge
Cause No. 45G02-0707-FB-59

January 15, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Joshua J. Farmer appeals the three-year sentence imposed following his guilty plea to class D felony auto theft,[1] class D felony theft,[2] and class A misdemeanor battery,[3] arguing that his sentence is inappropriate in light of the nature of the offenses and his character. We affirm.

On July 3, 2007, Farmer and Joshua Herman entered Frank Strug's garage in Dyer and stole his employer's work truck. On the same day, Farmer and Herman approached Mick Macak and Ryan Pufahl as they were walking down the street in Dyer. With a helmet and his fists, Farmer struck Pufahl several times in the head and body. Farmer then took Pufahl's shoes and hat.

On July 10, 2007, the State charged Farmer with two counts of class B felony robbery, class D felony auto theft, and class A misdemeanor resisting law enforcement. On May 5, 2008, the State filed an amended information, adding another count of class D felony theft and class A misdemeanor battery. On May 5, 2008, the parties entered into a plea agreement, in which Farmer agreed to plead guilty to class D felony auto theft, class D felony theft, and class A misdemeanor battery with an open sentence. The State dismissed the remaining charges.

On June 2, 2008, a sentencing hearing was held. The trial court found that Farmer's juvenile adjudications for robbery and battery were aggravating circumstances and that there

[1] Ind. Code § 35-43-4-2.5.

[2] Ind. Code § 35-43-4-2.

[3] Ind. Code § 35-42-2-1.

were no mitigating circumstances and sentenced Farmer to two years each for the class D felonies, to be served concurrently, and one year for the class A misdemeanor battery, to be served consecutively to the sentence for the felonies.

On appeal, Farmer asserts that his three-year aggregate sentence is inappropriate based on the nature of the offenses and his character. We observe that Article 7, Section 6 of the Indiana Constitution authorizes this Court to independently review and revise a sentence imposed by the trial court. *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. Indiana Rule of Appellate Procedure 7(B) states, "The Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." "Although appellate review of sentences must give due consideration to the trial court's sentence because of the special expertise of the trial bench in making sentencing decisions, Appellate Rule 7(B) is an authorization to revise sentences when certain broad conditions are satisfied." *Purvis v. State*, 829 N.E.2d 572, 587 (Ind. Ct. App. 2005) (internal citations omitted), *trans. denied*. The defendant bears the burden of persuading us that the sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). "When determining whether a sentence is inappropriate, we recognize that the advisory sentence 'is the starting point the Legislature has selected as an appropriate sentence for the crime committed.'" *Filice v. State*, 886 N.E.2d 24, 39 (Ind. Ct. App. 2008) (quoting *Weiss v. State*, 848 N.E.2d 1070, 1072 (Ind. 2006)), *trans. denied*. The advisory

sentence for a class D felony is one and one-half years, with a fixed term of between six months and three years. Ind. Code § 35-50-2-7.

As to the nature of the offenses, Farmer presents no argument. We observe that the nature of the thefts and the battery is not particularly aggravating. Nevertheless, Farmer's crimes were committed against more than one victim, which supports the imposition of consecutive sentences. *See Pittman v. State*, 885 N.E.2d 1246, 1259 (Ind. 2008) ("Consecutive sentences reflect the significance of multiple victims.").

As to Farmer's character, his criminal history includes juvenile adjudications for robbery and battery. These are the same offenses to which he pled guilty this time. In fact, he was on probation for these juvenile adjudications when he committed the current offenses.[4] Thus, even though his juvenile adjudications occurred five years ago, the fact that he committed the same offenses while still on probation does not reflect favorably on his character.

Farmer asks us to consider his difficult childhood, the fact that he just had a child of his own that he wants to raise, his remorse, and his guilty plea. Although evidence of Farmer's troubled childhood is relevant to our analysis, Indiana courts have "consistently held that evidence of a difficult childhood warrants little, if any, mitigating weight." *Ritchie*

[4] The presentence investigation report includes two adult misdemeanor arrests for public fighting and disorderly conduct in Illinois. Farmer argues that they were improperly included in the adult portion of his record. We observe that the trial court did not base its sentencing decision on adult arrests, but only referred to Farmer's juvenile history. Farmer also states that at sentencing he disputed that the Illinois charges were ever made against him and claims that the State never introduced evidence to prove the charges. We will not consider these charges in evaluating Farmer's criminal history, but in any event, we note that the Illinois charges are far less significant than his battery and robbery adjudications.

v. State, 875 N.E.2d 706, 725 (Ind. 2007); *see also Holsinger v. State*, 750 N.E.2d 354, 363 (Ind. 2001) (assigning the defendant's troubled childhood "weight in the low range"). As to his child, Farmer has failed to show that the hardship caused by his imprisonment rises above that which normally results. Next, we note that Farmer has failed to cite the portion of the record at which he expresses his remorse. *See* Ind. Appellate Rule 46(A)(8) ("Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on."). Therefore, this claim is waived.[5] *See Lyles v. State*, 834 N.E.2d 1035, 1050 (Ind. Ct. App. 2005) (concluding that appellant waived claim by failing to cite to necessary portions of record), *trans. denied*.

Finally, we note that while a guilty plea generally reflects favorably on a defendant's character, *see Scheckel v. State*, 655 N.E.2d 506, 511 (Ind. 1995), this Court has noted an exception "where the defendant has received a substantial benefit from the plea or where the evidence against him is such that the decision to plead guilty is merely a pragmatic one." *Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), *trans. denied* (2006). The record indicates that in exchange for Farmer's guilty plea, the State agreed to dismiss charges for two class B felony robberies and class A misdemeanor resisting arrest. As such, Farmer's guilty plea appears to be a pragmatic decision for which he has received a substantial benefit rather than a demonstration of his remorse. In sum, Farmer has failed to persuade us that his sentence is inappropriate in light of the nature of the offenses and his character.

[5] To the extent that Farmer made an apology, we observe that the trial court did not comment on it in its sentencing statement, which suggests that it may have been less sincere. *See Stout v. State*, 834 N.E.2d 707, 711 (Ind. Ct. App. 2005) (noting that trial court is in best position to judge sincerity of defendant's remorseful statements), *trans. denied*.

Affirmed.

ROBB, J., and BROWN, J., concur.